

**Before Shri R.S. Virk, District Judge (Retd.)  
In the matter of PACL Ltd.**

**File no. 670 (For review of orders dated 22/05/2019 File Nos. 642 & 655)**

**MR No. 4420-14**

**Review Petitioners :** Rakesh Pant and Sunita Kala etc.

**Present :** Shri Dinesh Khanduri, Advocate, Dehradun  
(Enrolment No. UP-7721/2000 and Uttrakhand-4062/2004)  
with Virender Singh Negi, Advocate, Dehradun  
(Enrolment No. UK-274/2012)

**Order :**

1. (a) It may be noticed at the outset that vide order dated 02/02/2016, passed in civil appeal no. 13301/2015 bearing the title Subarata Bhattacharaya Versus Securities & Exchange Board Of India, the Hon'ble supreme court had directed constitution of a committee by SEBI to be headed by Hon'ble Mr. Justice R.M. Lodha former Chief Justice of India as its Chairman for disposing of the land purchased by PACL so that the sale proceeds recovered there from can be paid to the investors who have invested their funds in the company for purchase of the land.

(b) 2<sup>nd</sup> Status Report (Volume-I) of the Justice (Retd.) R.M. Lodha Committee (in the matter of PACL Ltd) submitted before the Hon'ble Supreme Court, had at page 77 thereof, proposed as under :-

“It would be in the interest of the investors of the Company, that all objections based on documents purportedly executed after 02-02-2016 be scrutinized and then heard and disposed of by a retired Judicial Officer(s) assisted by requisite number of Advocates, appointed by the Committee.”

(c) The aforesaid proposal of committee was accepted by the Hon'ble Supreme Court.

2. (a) Subsequent thereto, I have been appointed by the said committee to hear objections/representations against attachments of various properties in the matter of PACL Ltd which appointment has been duly notified in SEBI Press release no. 66 dated 08/12/2017.

(b) My said appointment is also duly mentioned in the order dated 15/11/2017 (to be read with orders dated 13/04/2018, 02/07/2018, 07/12/2018 and 08/07/2019) of the Hon'ble Supreme Court in civil appeal no. 13301/2015 Subrata Bhattacharya Vs SEBI.

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3. The petitioners above named seek review of the order of this committee dated 22/05/2019 (which is common to objection petition nos. 642 and 655). The grounds putforth for review are being reproduced verbatim hereunder from paras 3 to 18 of the review petition in hand which read as under :-

- i. That your Hon'ble self has missed out some pertinent points raised by the objectors in their objection petition, written & oral arguments which need consideration, clarification and rectification so as to enable the objectors to get justice in its true perspective as it is said justice should not only be done but appear to be done and your above Order is devoid of both.
- ii. That this Hon'ble Committee as already stated in its Para no.1 & 2 of the Order in file no.642 & 655 dated 22.05.2019 was formed by SEBI as per direction of Hon'ble Supreme Court of India in Civil Appeal 13301/2015 titled Subarata Bhattacharya v/s SEBI vide Order dated 02.02.2016.
- iii. That as per record the CBI raided the PACL Ltd. office premises and seized the following documents i.e.. sale deeds, Ledger etc. of properties purchased by them in the name of PACL Company out of the funds of the investors and in fact the PACL Ledger show that the amount for purchase of the land in question were given much after the purchase has been effected in favour of Preet Pal Singh Kang.
- iv. That as per the CBI various sale deeds were seized which included the sale deed of land in question was purchased by the above objectors.
- v. That it is pertinent to note that B S & F C Branch of CBI had upon conversion of Preliminary Enquiry No.PE/BD1/2013/E/0003, registered an FIR vide No. RC-BDA /2014/E/0004/CBI/BS & FC/ND on 19.02.2014 under section 120-B r/w 420 IPC in pursuance of Order of Hon'ble Supreme Court of India dated 12.03.2013 passed in Civil Appeal No.6572 of 2004 in the matter of M/s PGF Ltd. Versus Union of India and others against :-
  - (i) M/s PGF Ltd. through its Managing Director namely
    - (a) Shri Nirmla Singh Bhangoo, and directors namely
    - (b) S/Shri Harchand Singh
    - (c) Chander Bhushan Dhilon and
    - (d) Prem Seth
  - (ii) As well as against M/s PACL Ltd.
    - (a) Through its Managing Director namely Shri Sukhdev Singh, and

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- (b) Whole time directors namely Shri Gurmeet Singh and Subrata Bhattacharya & additional director namely Shri Gurjant Singh Gill and some unknown others,  
And is as continue as Para No. 17 (b) & (c) of this Hon'ble Committee Order dated 22.05.2019
- (c) It was claimed inter-alia therein that since the properties in question seem to have been acquired from funds belonging to the general public under various schemes of M/s PACL Ltd. and in Order to verify the genuineness of these property details, CBI had sent letters under the signature of Joint Director, BS & FZ to the Revenue Heads (Secretary-Revenue ) of 6 states namely Delhi, Haryana Punjab ,MP, Rajasthan & Maharashtra, along with the details of property documents seized by CBI, with a request for the issuance of necessary directions to the Land Revenue Offices and Sub-Registrar Office under that a prior NOC from competent Court/CBI may kindly be obtained before allowing any further alienation/transfer of said land in future.

- vi. That it is pertinent to note that CBI raided the premises of PACL on 19.02.2014 and recovered all the documents including the sale deed of land in question, CBI had sent letters under the signature of Joint Director, BS & FZ to the Revenue heads (Secretary – Revenue) of 6 states namely Delhi, Haryana, Panjab, Madya Pradesh, Rajasthan & Maharastra but they does not include State of Utrakhand which was made in year 2000, with above 6 states as described in Para-17 of this Hon'ble Committee Order dated 22/05/2019, which also does not reveal the date of letter sent by CBI to above 6 States, so how can it be presumed that this information regarding the CBI letter sent to 6 States but this letter was not conveyed to Utrakhand State Govt. Authorities, hence not applicable on Applicant Objectors.
- vii. That it is pertinent to note that CBI raided the premises of PACL on 19.02.2014 and restraint Order was passed as claimed by SEBI on 22.08.2014, that the gap between the CBI raid and SEBI restraint Order is of 5 months. All these facts are already recorded in your Order passed in above matter dated 22.05.2019.
- viii. That the restraint/ attachment Order dated 22.08.2014 passed by SEBI does not comply with Law laid down in Order XXI Rule 54 of (The Code of Civil Procedure, 1908), wherein it is stated that:-

“Attachment of immovable property –(1) Where the property is immovable, the attachment shall be made by an Order prohibiting the judgment debtor from transferring or charging the property in any way, and all persons from taking any benefit such transfer or charge.

[(1-A) The Order shall also require the judgment –debtor to attend court on a specified date to take notice of the date to be fixed for selling the terms of the proclamation of sale.]

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(2) The Order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the Order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court house and also, where the property is land paying revenue to the government, in the office of the Collector of the district in which the land is situate, [and, where the property is land situated in a village also in the office of the Gram Panchayat, if any, having jurisdiction over that village.]

“(2) Sub-rule (3) substituted:-

(3) The attachment shall be deemed to have been made against transferee without consideration from the judgment –debtor, from the date of the Order of attachment; and as against all the person from the date on which they respectively had knowledge of the Order of attachment or the date on which the Order was proclaimed under sub-rule (2) whichever is earlier.”

It is pertinent to mention that all procedure laid down in above Para was not complied with therefore the above restraint/attachment Order do not applicable to the present objectors as the above Order were never conveyed to the District Collector of Dehradun hence not applicable to the objectors and hence is null and void. This fact has not been considered in your Order/judgment and hence this should be duly considered and rectified after pursuing this review petition.

- ix. That the restraint Order passed by the SEBI was not conveyed to the objectors via District Collector so far and hence this Order is null and void and not binding upon the objectors as no notice or summon was issued to the Applicant objectors.
- x. That as per the CBI all the original documents recovered in raid have been submitted to Hon'ble Justice R.M Lodha Committee which in turn passed it to your Committee then where were the Ledger of PACL Company seized by the CBI not presented Ledger of this case and are now being produced by accused ie.. PACL Company, which are not immune from forgery and tampering, as is evident from the 3 entries of approx same amount on 3 different dates whereas sale deed was executed in favour of Preet Pal Singh Kang on 16.11.2005. It is necessary to mention that financial year starts from 1<sup>st</sup> April to 31<sup>st</sup> March of every year & difference of date and year of entry of purchase money Amount of 4 years later is not admissible in the eye of Law, as it barred by Limitation Act.

It is pertinent to mention here that sale deed was executed earlier on 16.11.2005 and the Ledger entry of PACL shows it on 31.03.2009 and on other dates, if the sale deed was done earlier and the money given by the PACL was paid subsequently to the purchaser then how can it be presumed that the purchase money to

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purchase land in question was paid out of PACL funds and all these entries do not confirm with "The Banker's Books Evidence Act, 1891 (18 of 1891) and its rules.

- xi. That the miss-statement made by the PACL of execution of sale deed in year 2008, which was in fact executed on 16.11.2005 and in your Order the registration fees of sale deed is recorded as Rs.5810/- which is in fact was Rs 5010/-, which has to be explained by the PACL Company hence needs correction.
- xii. That PACL claims in its Ledgers that Preet Pal Singh Kang was advanced an amount of Rs. 3,52,000/-, 35200/- & 5810/- on 31/03/2009 and on other dates which was much after the date of purchase by the Preet Pal Singh Kang and PACL also does not disclosed against what guaranty or what property of Preet Pal Singh Kang was pledged to sanction such a heavy loan from the Account of Company is disclosed or clarified in the reply filed by PACL before this Hon'ble Committee or before the Hon'ble SECURITIES APPELLATE TRIBUNAL, MUMBAI, and their silence proves their guilt.
- xiii. That the Ledger filed by PACL before this Hon'ble Committee are not supported by any Income Tax Return of that financial year or any other reliable documents to support Entries in their Ledger hence can not relied upon and can not be taken as Evidence.
- xiv. That it is most pertinent and important to note that legal proceedings between the PACL & Legal bodies ie.. Hon'ble Supreme Court Various High Courts, Rajasthan, Delhi, etc.. SEBI , CBI, and Appellate Tribunal etc.. were conducted behind the back of present applicant Objectors and they had no knowledge or notice of above proceedings. This shows the collusiveness of the CBI, PACL and the Legal Bodies ie.. SEBI in particular and Appellate Tribunal in general and the ultimate victims now sought to be made are the present objectors who are already said to be bona-fide purchasers.
- xv. That the restraint order dated 22.08.2014 passed by SEBI was kept in abeyance for reasons best known to it, it was after the Appellate Tribunal directed SEBI to implement its order against PACL as PACL has to comply with the order of SEBI which had not been implemented by SEBI or comply by PACL, clearly showing their collusiveness and is evident from the records itself but none of the legal proceeding took place in the Uttrakhand High Court in the knowledge of the objectors because it is conducting the proceedings on the basis of admission of CBI that they had sent the directing letters to the several States revenue head but the same did not have the name of Uttrakhand State and hence these proceedings are being conducted without any legal basis so this Hon'ble Committee was to determine as to whether the aforesaid direction of CBI are applicable to Uttrakhand or not.

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- xvi. That the allegations made by you in your judgment/order whether the present objectors are the party to the fraud committed by PACL which is a wrong observation and not based upon legal facts and the assertion of the present objectors stands vindicated that they were bona-fide purchaser and innocent in any company fraud lent dealings. That is for the company to explain how Preet Pal Singh Kang was appointed "aggregator" which terminology do not stand the test law as word is a creation of PACL and does not find this word in Act or the rules of SEBI.
- xvii. That it is also pertinent to mention that the HON'BLE SECURITIES APPELLATE TRIBUNAL passed Order on 15.08.2015 and directed PACL to comply the Order of SEBI dated 22.08.2014 within three month, and Sale deed of the land executed in favour of Applicant Rakesh Pant on 02.06.2015 was prior to the Order of SECURITIES APPELLATE TRIBUNAL and hence not applicable to the Objectors because applicant Objectors were neither made a party in HON'BLE SECURITIES APPELLATE TRIBUNAL then how could they acquire the knowledge of the dispute or the Order passed by SEBI or Order of of any other Judicial Court.

4. I have heard the learned counsel for the petitioners and have gone through the file & record of this case.
5. None of the grounds put forth above by the petitioners fall within the purview of order XLVII of Code of Civil Procedure, 1908. The order sought to be reviewed cannot infact be reviewed by reappreciating the entire record more so when it is borne in mind that there is neither any 'inadvertent error' nor any 'error apparent' on record to warrant a review of the order in question dated 22/10/2018. Reference in this context may be made to the observations of the Hon'ble Supreme Court in the undermentioned cases with reference to the question as to under what circumstances plea for review can be entertained :-

- (i) In Thungabhadra Industries Ltd. v. Govt. of A.P. (1964) 5 SCR 174, another three-Judge Bench reiterated that the power of review is not analogous to the appellate power and observed:

"A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out."

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- (ii) In *Aribam Tuleshwar Sharma v. Aibam Pishak Sharma* (1979) 4 SCC 389, this Court answered in affirmative the question whether the High Court can review an order passed under Article 226 of the Constitution and proceeded to observe:

“But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

- (iii) In *Meera Bhanja v. Nirmala Kumari Choudhury* (1995) 1 SCC 170, the Court considered as to what can be characterised as an error apparent on the face of the record and observed:

“.....it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* AIR 1960 SC 137 wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

“An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.”

- (iv) In *Parsion Devi v. Sumitri Devi* (1997) 8 SCC 715, the Court observed:

“An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said

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to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47 Rule 1 CPC..... A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.

- (v) In *Lily Thomas v. Union of India* (2000) 6 SCC 224, R.P. Sethi, J., who concurred with S. Saghir Ahmad, J., summarised the scope of the power of review in the following words:

“Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised.”

- (vi) In *Haridas Das v. Usha Rani Banik* (2006) 4 SCC 78, the Court observed:

“The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing “on account of some mistake or error apparent on the face of the records or for any other sufficient reason”. The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict.”

- (vii) In *State of West Bengal v. Kamal Sengupta* (2008) 8 SCC 612, the Court considered the question whether a Tribunal established under the Administrative Tribunals Act, 1985 can review its decision, referred to Section 22(3) of that Act, some of the judicial precedents and observed:

“At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional

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matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3) (f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment / decision."

(viii) Board Of Control For Cricket, vs Netaji Cricket Club & Ors on 10 January, 2005 wherein it was reiterated inter-alia as under :-

"The courts can take notice of the subsequent events and can mould the relief accordingly. But there is a rider to these well established principles. This can be done only in exceptional circumstances, some of which have been highlighted above. This equitable principle cannot, however, stand in the way of the court adjudicating the rights already vested by a statute. This well settled position need not detain us, when the second point urged by the appellants is focused. There can be no quarrel with the proposition as noted by the High Court that a party cannot be made to suffer on account of an act of the Court.

There is a well recognised maxim of equity, namely, *actus curiae neminem gravabit* which means an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, *lex non cogit ad impossibilia*, i.e. the law does not compel a man to do that what he cannot possibly perform".

6. Applying the above discussed proposition of law to the facts of the case in hand, it will be evident that the grounds put forth by the applicant society as raised in para 27 of the review petition would reveal that there is neither any "inadvertent error" committed while passing the order in question dated 22/10/2018 and nor is there any "error apparent on the face of record" to warrant any interference with the said order by way of review. Infact, review of the said order dated 22/10/2018 if undertaken by me would tantamount to my sitting in appeal over my own order which is

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impermissible as per the principles enunciated in state of West Bengal Versus Kamalsen Gupta reported in (2008) 8 SCC 612 (Supra) and the other case law adverted to above.

7. In view of the foregoing discussion, I find no merit in this petition seeking review of my order dated 22/05/2019 and is thus hereby dismissed.

**Date : 12/09/2019**

  
**R. S. Virk**  
**Distt. Judge (Retd.)**

**Note:**

Two copies of this order are being signed simultaneously, one of which shall be retained on this file whereas the other one, also duly signed, shall be delivered to the review petitioner as and when requested /applied for. No certified copies are being issued by this office. However, the orders passed by me can be downloaded from official website of SEBI at [www.sebi.gov.in/PACL.html](http://www.sebi.gov.in/PACL.html).

**Date : 12/09/2019**

  
**R. S. Virk**  
**Distt. Judge (Retd.)**